

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
and)	
)	
STATE OF MARYLAND,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
MAYOR AND CITY COUNCIL)	
OF BALTIMORE, MARYLAND,)	
)	
Defendant.)	
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COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Maryland, acting by the authority of the Attorney General of Maryland and through its undersigned counsel, and acting at the request and on behalf of the Maryland Department of the Environment ("Department" or "MDE") files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought pursuant to Section 309(b) and (d), of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Clean Water Act" or "the Act"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and the assessment of civil penalties against Defendants Mayor and City Council of Baltimore (hereinafter collectively referred to as "Baltimore City"), for Baltimore City's numerous unpermitted and illegal discharges of pollutants to waters of the United States. In addition, this civil action seeks injunctive relief and civil penalties against Baltimore City pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), for violations of Section 402(a) of the Clean Water Act, 33 U.S.C. § 1342(a), and the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permits.

2. Plaintiff State of Maryland also brings supplemental state claims for violations of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 1391(b), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because it is the judicial district where Baltimore City is located and where the alleged violations occurred.

5. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516, 519, and Section 506 of the Clean Water Act, 33 U.S.C. § 1366.

6. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State of Maryland, which joins in this action as a co-plaintiff.

7. Authority to bring the supplemental claims identified in this action is vested in the Office of the Attorney General of Maryland by § 9-344 of the Environment Article, Annotated Code of Maryland.

DEFENDANT

8. Defendant Baltimore City is a political subdivision of the State of Maryland, duly chartered and formed under the laws of the State of Maryland, and is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

9. Baltimore City owns and operates two wastewater treatment plants located in Baltimore, Maryland, that discharge "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), into "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

10. Section 309(e) of the Act, 33 U.S.C. § 1319(e), requires that the State of Maryland be a party to this action. The State of Maryland has stated that it intends to participate in this action as a plaintiff.

FEDERAL STATUTES AND REGULATIONS

11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” except in compliance with certain sections of the Act, including Section 402 of the Act, 33 U.S.C. § 1342.

12. The term “discharge of pollutants” is defined in Section 502(12) of the Act, 33 U.S.C. § 1362(12), to mean “any addition of any pollutant to navigable waters from any point source”

13. The term “navigable waters” is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(12) to mean “the waters of the United States, including the territorial seas.”

14. The term “point source” is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.”

15. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits to "persons" that authorize the discharge of any pollutant into navigable waters, but only in compliance with Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and such other conditions as EPA determines are necessary to carry out the provisions of the Clean Water Act.

16. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program and, after receiving approval of its program by the EPA may issue NPDES permits. The State of Maryland established its own NPDES permit program and received EPA approval of its program in 1974.

17. Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, inter alia, Section 301 of the Clean Water Act, 33 U.S.C. §

1311, or violates any permit condition or limitation implementing, inter alia, Sections 301, 308 or 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1318 or 1342.

18. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides that any person who violates, inter alia, Section 301 of the Clean Water Act, 33 U.S.C. § 1311, or who violates any condition or limitation of a NPDES permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation.

19. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), after January 30, 1997, any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation.

MARYLAND STATUTES AND REGULATIONS

20. Section 9-253 of the Environment Article, Annotated Code of Maryland, confers upon the Secretary of MDE all powers that are necessary to comply with and represent the State of Maryland (referred to throughout the Environment Article as "this State") under the federal Clean Water Act.

21. Pursuant to Section 9-322 of the Environment Article, "a person may not discharge any pollutant into waters of this State" except in compliance with certain provisions of the Environment Article, including Section 9-323.

22. Section 9-323 of the Environment Article requires a person to hold a discharge permit issued by the Department before the person may, among other things, operate any disposal system the operation of which could cause or increase the discharge of pollutants to waters of this State.

23. The term "discharge" is defined in Section 9-101(b) of the Environment Article as "(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute."

24. The term "pollutant" means: " (1) Any waste or wastewater that is discharged from:
(i) A publicly owned treatment works; or (ii) An industrial source; or (2) Any other liquid, gaseous, solid, or other substance that will pollute any waters of this State."

25. The term "waters of this State" is defined by Section 9-101(l) to include "(1) both surface and underground waters within the boundaries of this State subject to its jurisdiction, including parts of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay, and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this State, other than those designed to collect, convey, or dispose of sanitary waste; and (2) the flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood."

26. Sections 9-323 and 9-324 of the Environment Article authorize MDE to issue permits to persons authorizing the discharge of pollutants, but only in compliance with State and federal water quality standards, effluent limitations and any conditions the Department considers necessary to prevent violation of Title 9, Subtitle 3 of the Environment Article.

27. Section 9-339 of the Environment Article authorizes MDE to bring an action for an injunction against any person who violated any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit adopted or issued by the Department thereunder.

28. Section 9-342(a) of the Environment Article provides that a person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or permit adopted or issued by the Department thereunder, is subject to a civil penalty of up to \$10,000 per violation, with each day a violation occurs constituting a separate violation.

GENERAL ALLEGATIONS

Wastewater Treatment and Collection System

29. The municipal wastewater collection and treatment system owned and operated by Baltimore City (referred to hereinafter as the "publicly owned treatment works" or "POTW") is a

"treatment works" as that term is defined in Section 212(2)(A) and (B) of the Clean Water Act, 33 U.S.C. § 1292(2)(A) and (B), and a "publicly owned treatment works" as that term is defined by 40 C.F.R. § 122.2.

30. From approximately June 1973 through fiscal year 1990, when Congress ceased appropriating funds for distribution under the Clean Water Act's Title II construction grants program, EPA had awarded Baltimore City approximately \$347 million for the construction of its POTWs. The construction grants awarded by EPA during this time covered approximately between 75% and 55% (beginning 1984) of the total cost of the projects proposed by the City of Baltimore, and accepted by EPA, for funding.

31. EPA awarded Baltimore City Clean Water Act Title II construction grants monies for, inter alia, the following projects: In 1973, EPA awarded Baltimore City \$20,136,813 to construct intercept sewers; In 1973, EPA awarded Baltimore City \$1,368,750 to construct the Moores Run-Herring Run Interceptor, pump station and force main; In July 1997, EPA awarded Baltimore City \$3,953,700 to assist in the replacement of the Eastern Avenue force main; In September 1977, EPA awarded Baltimore City \$1,252,150 to assist in the repairs of the Eastern Avenue pump station; and from May 1977 at least until May 1998, EPA awarded Baltimore City over \$9,000,000 to assist in the construction of relief interceptor sewers for Gwynns Falls.

32. In 1992, Baltimore City received a Federal appropriation of \$40 million from EPA's Coastal Cities Fund for the construction of secondary treatment facilities at the Back River WWTP.

33. In 1993, Baltimore City received a Federal appropriation of \$40 million from EPA's Coastal Cities Fund for nutrient reduction, which Baltimore City applied to construction at the Back River Wastewater Treatment Plant ("Back River WWTP").

34. Baltimore City also has received funding for the construction and expansion of its POTWs from the State of Maryland through the State Revolving Loan Fund Program. At least since fiscal year 1990, Maryland's Revolving Loan Fund Program has received appropriations

from the United States. Since the inception of Maryland's Revolving Loan Fund Program, Baltimore City has received approximately \$63 million for the construction of its POTWs from the State of Maryland.

35. Baltimore City's POTWs consist of an extensive wastewater collection network, including, inter alia, force mains, pipes, wastewater pumping stations, and two regional wastewater treatment plants -- the Patapsco Wastewater Treatment Plant ("Patapsco WWTP") and the Back River WWTP.

36. Wastewater collected by, transported through, and discharged from the POTWs owned by Baltimore City is a "pollutant" as that term is defined at Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6).

37. On or about August 1, 1993, the State of Maryland issued NPDES Permit No. MD0021555 and State Discharge Permit No. 89-DP-0581 to Baltimore City ("Patapsco WWTP Permit") for the Patapsco WWTP under the authority of Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulation codified at COMAR 26.08.01 et seq. The Patapsco WWTP Permit was scheduled to expire on July 31, 1998, but has been administratively extended in accordance with federal and state regulation, 40 C.F.R. § 122.6, COMAR 26.08.04.06A.

38. The Patapsco WWTP, located at 3501 Asiatic Avenue, Baltimore, Maryland, serves Baltimore City, portions of Baltimore County, Maryland, Ann Arundel County, Maryland, and Howard County, Maryland. The Patapsco WWTP receives and treats residential, commercial, and industrial wastewater which it discharges through a permitted outfall to the Patapsco River. The Patapsco WWTP has a rated annual average daily wastewater flow capacity of 63 million gallons a day ("mgd").

39. On or about January 1, 1991, EPA issued NPDES Permit No. MD0021601 and State Discharge Permit No. 93-DP-0580A ("Back River WWTP Permit") to Baltimore City for the Back River WWTP under the authority of Section 402(b) of the Clean Water Act, 33 U.S.C. §

1342(b), and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulation codified at COMAR 26.08.01 et seq. The Back River WWTP permit was scheduled to expire on September 30, 2001, but has been administratively extended in accordance with federal and state regulation. 40 C.F.R. § 122.6, COMAR 26.08.04.06A.

40. The Back River WWTP, located at 8201 Eastern Boulevard, Baltimore County, Baltimore, Maryland 21224, serves Baltimore City and portions of Baltimore County, Maryland. The Back River WWTP receives and treats residential, commercial, and industrial wastewater which it then discharges through permitted outfall(s) to Back River and the Baltimore Harbor. The Back River WWTP has a rated annual average daily wastewater flow capacity of approximately 130 mgd.

41. The Patapsco WWTP Permit and the Back River WWTP Permit establish various monitoring, sampling and reporting terms and conditions on Baltimore City . The Patapsco WWTP and Back River WWTP NPDES permits prohibit overflows from Baltimore City's wastewater collection system and require Baltimore City to operate, and to take all reasonable steps, to prevent overflows from the wastewater collection system.

Unpermitted Discharges

42. At all times relevant to this Complaint, there have been hundreds of discharges of untreated wastewater containing raw sewage from the POTWs' manholes, pump stations, and sewer lines to waters of the United States, including, inter alia, the Patapsco River, Back River, Jones Falls, Gwynns Run, Dead Run, Maidens Choice, Moores Run, Stoney Run, Western Run, Colgate Creek, Herring Run, Powder Mill, and the Baltimore Harbor, which were not discharged through a permitted outfall and were not authorized under any NPDES permit issued to Baltimore City.

43. The Patapsco River, Back River, Jones Falls, Gwynns Run, Dead Run, Maidens Choice, Moores Run, Stoney Run, Western Run, Colgate Creek, Herring Run, Powder Mill, and the Baltimore Harbor as well as other such surface waters to which pollutants have been

discharged, are "navigable waters" within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

44. The Patapsco River, Back River, Jones Falls, Gwynns Run, Dead Run, Maidens Choice, Moores Run, Stoney Run, Western Run, Colgate Creek, Herring Run, Powder Mill, and the Baltimore Harbor are each tributary to the Chesapeake Bay. The Chesapeake Bay is the nation's largest estuary, "a national treasure and a resource of worldwide significance," and for that reason accorded special recognition under Section 117 of the Clean Water Act, 33 U.S.C. § 1267.

45. Unpermitted discharges from Baltimore City's POTWs have resulted from multiple causes including, inter alia, inadequate flow capacity in the collection system, illegal and improper cross-connections between sanitary and storm sewers, poor maintenance of the collection system including pumping stations, excessive infiltration and inflow to the sanitary sewers, and exfiltration from the sanitary sewers.

46. Unpermitted discharges of wastewater from the POTW to navigable waters have occurred on numerous occasions and include, but are not limited to:

A. On or about September 26, 2000, approximately 1,500,000 million gallons of untreated wastewater containing raw sewage was discharged to the Jones Falls from Baltimore City's separate sanitary sewer system;

B. Beginning on or about September 8, 2000, and continuing at least until September 9, 2000, 10,000,000 gallons of untreated wastewater containing raw sewage was discharged to Colgate Creek (a tributary of the Patapsco River) from Baltimore City's separate sanitary sewer's Dundalk pumping station;

C. On or about July 26, 2000, approximately 4,400,000 gallons of untreated wastewater containing raw sewage was discharged to the Jones Falls from Baltimore City's separate sanitary sewer system;

D. Between January 1996 and the present, at least 110 million gallons of wastewater containing raw sewage have been illegally discharged from Baltimore City's separate sanitary sewer system.

47. Unpermitted discharges of raw sewage from the POTW to receiving water bodies in and around Baltimore City have caused and/or contributed to the presence of elevated levels of coliform bacteria in these water bodies. Coliform bacteria is an indicator that unacceptable levels of disease-causing organisms are present in receiving water bodies.

48. Organisms in untreated wastewater containing raw sewage can cause a number of diseases in users of contaminated areas. These diseases include, but are not limited to, enteric diseases such as gastroenteritis, dysentery, and cholera. These diseases are highly communicable.

49. Analyses of monthly samples collected during the period from January 1998 through December 2000, indicate that unpermitted discharges of raw sewage from Baltimore City's wastewater collection system have caused and/or contributed to fecal coliform levels to exceed State of Maryland water quality-based standards in Gwynns Falls, Baltimore Harbor, Herring Run, and Jones Falls.

FIRST CLAIM FOR RELIEF (CLEAN WATER ACT)

50. Paragraphs 1 through 19 and 29 through 49 are re-alleged and incorporated herein by reference.

51. At least since 1997, Baltimore City has discharged, and upon information and belief, continues to discharge, pollutants from its POTWs into navigable waters without the authorization of a NPDES permit.

52. The un-permitted discharges include, without limitation, the un-permitted discharges identified in Paragraphs 36, above.

53. Each day of each unpermitted discharge of pollutants is a separate violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

54. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311, shall be subject to a civil penalty not to exceed \$25,000 per day for each such violation occurring after February 4, 1987, and before January 30, 1997.

55. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), after January 30, 1997, any person who violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation.

56. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters without a permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

SECOND CLAIM FOR RELIEF (CLEAN WATER ACT)

57. Paragraphs 1 through 19 and 29 through 49 are re-alleged and incorporated herein by reference.

58. Part III, Section C, Condition 3.a of the Back River WWTP permit provides that “all overflows from the wastewater collection system are prohibited.”

59. Baltimore City violated Part III, Section C, Condition 3.a of the Back River WWTP permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by allowing the discharge of wastewater from the portion of the collection system served by the Back River WWTP.

60. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each such violation occurring after February 4, 1987, and before January 30, 1997.

61. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), after January 30, 1997, any person who violates Sections 301 and 402 of the Clean Water Act, 33

U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation.

62. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of its Back River NPDES permit and Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

THIRD CLAIM FOR RELIEF (CLEAN WATER ACT)

63. Paragraphs 1 through 19 and 29 through 49 are re-alleged and incorporated herein by reference.

64. Part II, Section G of the Patapsco permit prohibits overflows of wastewater from the portion of the collection system served by the Patapsco WWTP except under very narrow circumstances none of which are applicable to the discharges of wastewater from the collection system alleged herein.

65. Baltimore City violated Part II, Section G of the Patapsco WWTP permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by allowing the discharge of wastewater from the portion of the collection system served by the Patapsco WWTP.

66. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each such violation occurring after February 4, 1987, and before January 30, 1997.

67. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), after January 30, 1997, any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation.

68. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of its Patapsco NPDES permit and Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

FOURTH CLAIM FOR RELIEF (CLEAN WATER ACT)

69. Paragraphs 1 through 19 and 29 through 49 are re-alleged and incorporated herein by reference.

70. 40 C.F.R. § 122.41(e) states that a "permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit."

The provision further requires "the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit."

71. Part III, Section C, Condition 1.a of the Back River WWTP permit provides that "all wastewater collection system facilities shall be operated in a manner which will minimize upsets and overflows from the wastewater collection system." Part III, Section C, Condition 1.b provides that the "[t]he permittee shall take all reasonable steps to prevent or minimize overflows from the wastewater collection system."

72. Baltimore City violated Part III, Section C, Conditions 1.a and b of the Back River WWTP permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by failing to operate and maintain its wastewater collection system in a manner to minimize overflows.

73. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each such violation occurring after February 4, 1987, and before January 30, 1997.

74. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), after January 30, 1997, any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation.

75. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of its Back River NPDES permit and Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

FIFTH CLAIM FOR RELIEF (CLEAN WATER ACT)

76. Paragraphs 1 through 19 and 29 through 49 are re-alleged and incorporated herein by reference.

77. 40 C.F.R. § 122.41(e) states that a "permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit." The provision further requires "the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit."

78. Part III, Section B, Condition 3.a of the Patapsco WWTP permit requires that Baltimore operate its wastewater collection system efficiently in a manner to minimize upsets and discharge of excessive pollutants. Part III, Section B, Condition 3.b of that permit provides that the permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with the permit.

79. Baltimore City violated Part III, Section B, Conditions 3.a. and b of the Patapsco WWTP permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by failing to operate and maintain its wastewater collection system in a manner to minimize discharge of wastewater containing sewage from the portion of the wastewater collection system served by the Patapsco WWTP.

80. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each such violation occurring after February 4, 1987, and before January 30, 1997.

81. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), after January 30, 1997, any person who violates Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each such violation.

82. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of its Patapsco NPDES permit and Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

FIRST SUPPLEMENTAL CLAIM FOR RELIEF UNDER STATE LAW

83. Paragraphs 1 through 10 and 20 through 49 are re-alleged and incorporated herein by reference.

84. At least since 1997, Baltimore City has discharged, and upon information and belief, continues to discharge, pollutants from its POTWs into navigable waters without the authorization of a State discharge permit.

85. The un-permitted discharges include, without limitation, the un-permitted discharges identified in Paragraph 36, above.

86. Each day of each unpermitted discharge of pollutants is a separate violation of Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

87. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Baltimore City's violation of Sections 9-322 and 9-323 of the Environment Article.

88. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to waters of this State without a permit in violation of Sections 9-322 and 9-323 of the Environment Article.

SECOND SUPPLEMENTAL CLAIM FOR RELIEF UNDER STATE LAW

89. Paragraphs 1 through 10 and 20 through 49 are re-alleged and incorporated herein by reference.

90. Part III, Section C, Condition 3.a of the Back River WWTP Permit provides that all overflows from the wastewater collection system are prohibited.

91. Baltimore City violated Part III, Section C, Condition 3.a of the Back River WWTP permit and Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, by allowing the discharge of wastewater from the portion of the collection system served by the Back River WWTP.

92. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Baltimore City's violation of Part III, Section C, Condition 3.a of the Back River WWTP Permit and Sections 9-322 and 9-323 of the Environment Article.

93. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of its Back River Permit and Sections 9-322 and 9-323 of the Environment Article.

THIRD SUPPLEMENTAL CLAIM FOR RELIEF UNDER STATE LAW

94. Paragraphs 1 through 10 and 20 through 49 are re-alleged and incorporated herein by reference.

95. Part II, Section G of the Patapsco WWTP Permit prohibits overflows of wastewater from the portion of the collection system served by the Patapsco WWTP except under very narrow circumstances none of which are applicable to the discharges of wastewater from the collection system alleged herein.

96. Baltimore City violated Part II, Section G of the Patapsco WWTP Permit and Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, by allowing the discharge of wastewater from the portion of the collection system served by the Patapsco WWTP.

97. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Baltimore City's violation of

Part II, Section G of the Patapsco WWTP Permit and Sections 9-322 and 9-323 of the Environment Article.

98. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of its Patapsco WWTP Permit and Sections 9-322 and 9-323 of the Environment Article.

FOURTH SUPPLEMENTAL CLAIM FOR RELIEF UNDER STATE LAW

99. Paragraphs 1 through 10 and 20 through 49 are re-alleged and incorporated herein by reference.

100. 40 C.F.R. § 122.41(e) states that a "permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit." The provision further requires "the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit."

101. The requirements of 40 C.F.R. § 122.41(e) are applicable to State programs and are enforceable under Maryland law pursuant to Section 9-253 of the Environment Article, Annotated Code of Maryland, and COMAR 26.08.04.02A and 26.08.04.07.

102. Part III, Section C, Condition 1.a of the Back River WWTP Permit provides that all wastewater collection system facilities shall be operated in a manner which will minimize upsets and overflows from the wastewater collection system. Part III, Section C, Condition 1.b provides that the "[t]he permittee shall take all reasonable steps to prevent or minimize overflows from the wastewater collection system."

103. Baltimore City violated Part III, Section C, Conditions 1.a and b of the Back River WWTP Permit and Sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, by failing to operate and maintain its wastewater collection system in a manner to minimize overflows.

104. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Baltimore City's violation of Part III, Section C, Conditions 1.a and b of the Back River WWTP Permit and Sections 9-322 and 9-323 of the Environment Article.

105. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of the Back River WWTP Permit and Sections 9-322 and 9-323 of the Environment Article.

FIFTH SUPPLEMENTAL CLAIM FOR RELIEF UNDER STATE LAW

106. Paragraphs 1 through 10 and 20 through 49 are re-alleged and incorporated herein by reference.

107. 40 C.F.R. § 122.41(e) states that a "permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit." The provision further requires "the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit."

108. The requirements of 40 C.F.R. § 122.41(e) are applicable to State programs and are enforceable under Maryland law pursuant to Section 9-253 of the Environment Article, Annotated Code of Maryland, and COMAR 26.08.04.02A and 26.08.04.07.

109. Part III, Section B, Condition 3.a of the Patapsco WWTP Permit requires that Baltimore operate its wastewater collection system efficiently in a manner to minimize upsets and discharge of excessive pollutants. Part III, Section B, Condition 3.b of that permit provides that the permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with the permit.

110. Baltimore City violated Part III, Section B, Conditions 3.a. and b of the Patapsco WWTP Permit and Sections 9-322 and 9-323 of the Environment Article, Annotated Code of

Maryland, by failing to operate and maintain its wastewater collection system in a manner to minimize discharges of wastewater containing sewage from its the portion of the wastewater collection system served by the Patapsco WWTP.

111. Pursuant to Section 9-342(a) of the Environment Article, Plaintiff State of Maryland is entitled to a civil penalty of up to \$10,000 for each day of each of Baltimore City's violation of Part III, Section B, Conditions 3.a. and b of the Patapsco WWTP Permit and Sections 9-322 and 9-323 of the Environment Article.

112. Unless enjoined by the Court, Baltimore City will continue to discharge pollutants to navigable waters in violation of its Patapsco NPDES permit and Sections 9-322 and 9-323 of the Environment Article.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Maryland, respectfully pray that this Court provide the following relief:

1. A permanent injunction directing defendant City of Baltimore to take all steps necessary to come into permanent, consistent compliance with the Clean Water Act, the regulations promulgated thereunder, and its NPDES/State permit;

2. A judgment assessing civil penalties against defendant;

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3. A judgment awarding the United States and the State of Maryland the costs of this action; and

4. Such further relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

Dated: _____

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